4

Changing Federal-Provincial Partnerships: A Comparison of the Terms and Provisions of the Canada-Quebec GST Agreement and the Federal-Provincial Tax Collection Agreement

ASPECTS OF PERSONAL INCOME TAXATION IN ONTARIO

HJ
4663
.O57
.A86
n.4

c.1
tor mai

Ministry of Revenue

ALL B

MINISTRY OF REVENUE

MAR - 6 1992

fniu

LIBRARY

In 1991-92, the Ontario Ministry of Revenue reviewed several aspects of personal income taxation in Ontario. The review is comprised of six essays. They are:

1. Ontario PIT Administration by Revenue Canada, Taxation

2. The Federal-Provincial Tax Collection Agreement: How Ontario Receives Its Personal Income Tax

3. Personal Income Tax Coordination - The Federal-Provincial Tax Collection Agreements: An Analysis of the Finance Canada Discussion Paper

4. Changing Federal-Provincial Partnerships: A Comparison of the Terms and Provisions of the Canada-Quebec GST Agreement and the Federal-Provincial Tax Collection Agreement

5. Rationalizing the Personal Tax and Transfer Payment Systems: The Quebec Experience and Prospects for Ontario

6. A Compromise Solution: An Alternative to the Present Federal-Provincial Tax Collection Agreement and Establishment of a Separate Ontario PIT Administration

fnlu

TABLE OF CONTENTS

		Page
EXECUTIVE SUMMARY		1
PART I	INTRODUCTION AND BACKGROUND	
	Introduction	3
	Background	4
PART II	COMPARING THE TWO AGREEMENTS	
	Constitutional Authority	7
	The Tax Base	7
	Legislation and Administration	8
	Costs	10
	Management of Funds	12
	Audit	16
	Enforcement and Investigations	17
	Objections and Appeals	18
	Prosecutions	20
	Dispute Resolution	21
	Co-ordination and Liaison	23
	Termination	26

PART III ANALYSIS AND CONCLUSIONS

Introduction 28

Tax Policy Development 28

Cost Sharing 31

Conclusions 34

Executive Summary

The purpose of this paper is to reveal the differences between two federal-provincial Agreements - the Canada-Quebec Goods and Services Tax Agreement (the GST Agreement) and the Federal-Provincial Tax Collection Agreement (the TCA).

The former Agreement, signed in April 1991 reflects a far greater measure of equality between the parties than does the latter Agreement signed twenty-nine years earlier in April 1962.

The areas of greatest divergence between the two Agreements are tax policy development and cost sharing. The GST Agreement legitimizes the involvement of Quebec authorities in tax policy and strategy-setting development. By contrast, being a partner to the TCA requires that member provinces relinquish much of their provincial income tax autonomy for policy development to the federal government.

With respect to costs, the GST Agreement affords equal treatment of each party for management of funds and costs of administration. While the TCA would appear upon first perusal to be very advantageous to Ontario, a more detailed analysis of direct and indirect costs suggests that the Province bears a very significant financial burden for TCA membership.

Given the transformation of Canadian federalism, the newly-signed GST Agreement may be representative of the emerging federal-provincial relationship. On the other hand, an argument could be advanced that Quebec's traditional *maître chez nous* stance results in the federal-provincial GST Agreement as a unique, rather than a representative example of federal-provincial agreements. Quebec's historical development of its provincial governmental institutions and administration have been directed toward a far greater measure of self-control and self-delivery than have those of other provinces. Insistence upon being regarded as an equal partner in federal-provincial negotiations, and with the ability to "go it alone" should Canada be unwilling to accede to Quebec's demands, gives Quebec greater leverage than other provinces in federal-provincial negotiations.

By comparison, the TCA exists as a blueprint from a bygone era, one in which federal control and authority were far more pervasive and uncontested than is the case today. As a result, Ontario and the other provinces which are partners to the TCA find themselves in increasingly confining circumstances at a time when expanded flexibility is required to address unique provincial problems and priorities.

As in other fields of endeavour, a "more level playing field" is being sought to establish a greater sense of balance and fairness for the provinces. Perhaps the Canada-Quebec GST Agreement can provide some guidance for the provinces in this search.

Digitized by the Internet Archive
in 2018 with funding from
Ontario Council of University Libraries

https://archive.org/details/changingfederalp00onta

PART I

INTRODUCTION AND BACKGROUND

Introduction

The Canadian tradition of federal-provincial relations involves many cases of shared administration, reciprocal agreements and bilateral exchanges. These arrangements are held as examples of federal-provincial harmony and co-operation, and as reflections of the spirit of partnership in the Canadian federation.

While this paper does not challenge the existence of such partnership arrangements, the nature of the partnership does not always accord equal status to the participants. In some cases, the constitutional division of powers may be responsible for an uneven distribution of powers and authority. In other cases, when equal constitutional powers exist, it is reasonable to expect that there should be an equal distribution of advantages to each partner.

This paper, by comparative analysis, examines two federal-provincial Agreements. One Agreement, the Federal-Provincial Tax Collection Agreement (the TCA) involves federal administration and collection of tax revenues on behalf of Ontario. The other agreement, the Canada-Quebec Goods and Services Tax (GST) Agreement (the GST Agreement), involves provincial administration and collection of tax revenues on behalf of the federal government in the province of Quebec.

The comparison involves a comprehensive analysis of the terms and conditions of the two Agreements. Often there are like provisions included in the Agreements, although the specific relationship of the parties differs substantially. Frequently, due to the differences in the negotiated relationship between the parties, one of the Agreements contains provisions which are entirely absent in the other agreement.

Following each comparison of the terms and conditions, which is organized by functional grouping, a brief narrative commentary follows. Thereafter, specific analyses of differences in tax policy development and cost sharing are laid out. It is in these areas that the most significant differences in the two Agreements, and the adverse effects for Ontario, are most pronounced.

The paper concludes with a brief overall summary of the analysis and a parting reflection for Ontario in its negotiations with the federal government for a revitalized Federal-Provincial Tax Collection Agreement.

Background

The Canada-Quebec GST Agreement

The Canada-Quebec GST Agreement was signed on April 24, 1991. This signing concluded the details of provisions contained in a more general Memorandum of Understanding between Canada and Quebec signed on August 30, 1990, and a specific agreement in principle with respect to human resources signed on October 3, 1990.

Both the federal and Quebec provincial governments sought to harmonize the federal GST and Quebec provincial sales tax (QST) bases to reduce administrative costs for government and taxpayers. Additionally, taxpayers would experience compliance simplification through a common tax collection and remittance system. The federal government estimates that 500 fewer employees will be required to collect GST/QST under the harmonized system than via separate federal and provincial administrations.

The harmonized approach requires the Quebec sales tax base to conform with the federal GST base and for the operating rules of the two tax bases to be consistent. Effective January 1, 1991, Quebec's sales tax base has been harmonized with respect to the federal GST base for all personal (movable) goods.

A harmonization of Quebec's sales tax base with the GST base with respect to services and real (immovable) property was scheduled to take effect on January 1, 1992. This has now been delayed until July 1, 1992. The federal government is responsible for all basic GST facilities and equipment in the transition year. All GST facilities and equipment were to be turned over on a "turnkey" basis to Quebec effective January 1, 1992, the date at which Quebec was scheduled to assume full administration of a harmonized GST and QST in Quebec. This transfer has now also been delayed until July 1, 1992.

The Federal-Provincial Tax Collection Agreement (TCA)[1]

Since 1962, all provinces except Quebec, have had their provincial personal income taxes collected on their behalf by the federal government under the terms and conditions of the Federal-Provincial Tax Collection Agreement. Under the TCA, provinces receive charge-free processing, collection, and remittance service from the federal government. The federal government, in turn, is provided with a uniform personal income tax system across Canada that conforms to federal statutes, regulations and interpretations.

With the introduction of provincial tax credit schemes, the federal government has accommodated their administration within the TCA. Provinces pay a fee, currently equivalent to 1% of the amount of provincial credits processed.

1. For a detailed description of the Federal-Provincial Tax Collection Agreement, refer to the essay entitled The **Federal-Provincial Tax Collection Agreement: How Ontario Receives Its Personal Income Tax.**

The TCA recognizes the constitutional right of both levels of government to levy taxes in the same tax fields, while empowering the federal government to be the national collector of personal income tax. Provincial taxes are derived by the setting of a fixed provincial rate of tax applied to "basic federal tax".

While some provinces also have their corporate income taxes collected via the TCA, Ontario, Alberta and Quebec have their own corporations tax administration. Even here, there is a great deal of conformity between the federal and Ontario corporations tax acts and regulations.

PART II

COMPARING THE TWO AGREEMENTS

Constitutional Authority

GST Agreement	Tax Collection Agreement
Both levels of government have equal rights of taxation in the field.	Both levels of government have equal rights of taxation in the field.

Commentary

The constitution empowers the federal government with rights of direct and indirect taxation. Provincial governments are limited to rights of direct taxation only. Since both the GST and personal income taxes are defined as direct taxes (i.e. charged directly to and payable by the person(s) incurring the tax liability), both levels of government share equal authority in the fields. It should be noted that Quebec does not believe it has the constitutional authority to level a multi-stage provincial tax and for this reason opted to retain a single stage levy.

The Tax Base

GST Agreement	Tax Collection Agreement
The tax base of the Quebec provincial sales tax (QST) must be "substantially harmonized" with the tax base of the GST.	Canada defines the tax base, income, deductions, allowable expenses, and non-refundable tax credits and their amounts.

Commentary

In both cases, Canada defines the tax base. With respect to the GST Agreement, Quebec retains latitude with regard to harmonization and sole responsibility for QST tax policy. In contrast, as a condition of membership in the TCA, the provinces confer sole authority to the federal government for definition of the tax base. By doing so, the provinces transfer a large measure of control to the federal government of provincial tax policy in this field of taxation.

Legislation and Administration

GST Agreement	Tax Collection Agreement
Canada is responsible for all legislation, regulations and other statutory instruments relating to the GST.	Provincial administration and acts must conform to federal statutes, regulations and interpretations.
Canada confers the required authority on provincial officials for the administration of federal GST legislation in Quebec.	Ontario confers the required authority on federal officials for the administration of the Income Tax Act (Ontario).
Quebec administers all matters relating to GST in compliance with national standards established by Canada.	There are no specific standards established by Ontario. All federal standards or practices apply automatically to Ontario.
Canada is responsible for all unspecified matters and administration and enforcement of Division III of Part IX of the federal Excise Tax Act, and the provisions of that Act concerning non-residents.	There are no unspecified matters relative to any residual powers.
Canada is responsible for legislation, regulations and other GST statutory instruments, and for the interpretation of same.	Ontario parallels federal legislation, regulations and interpretations.
Quebec will administer GST in Quebec in accordance with interpretations made by Canada and in accordance with Canada's tax policy.	Canada administers the Income Tax Act (Ontario) as a replica of the Income Tax Act (Canada).
Where differences in interpretation exist between Canada and Quebec, Canada will make the definitive decision and Quebec will apply it.	Ontario accepts as final all decisions of the Minister of National Revenue, without the benefit of consultation or discussion.
Any precedent-setting interpretation or advance ruling must be submitted to Canada for review and approval before communication to any party.	Canada has complete dominion over interpretations and advance rulings. Ontario has no input, merely complying with federal decisions.

Commentary

The establishment of national standards is unique to the GST Agreement. The development and implementation of standards are to the advantage of both parties. For Canada, national standards ensure a uniform application of the legislation and its consistent administration by provinces. For the provinces, there is clarity in administrative requirements.

Under the Federal-Provincial Tax Collection Agreement, since the federal government is the common administrator of provincial legislation and the sole collector of personal income taxes, its decrees and edicts have uniform national application.

Regarding interpretations and advance rulings, the Canada-Quebec GST Agreement provides for provincial input. While the final decision remains in Canada's control, there is a formal mechanism for provincial input. (For further detail, refer to Dispute Resolution)

The Federal-Provincial Tax Collection Agreement confers complete authority for interpretations and advance rulings on Canada. Since provincial input is not sought or invited, there is no formal mechanism for provincial input.

Costs

GST Agreement	Tax Collection Agreement
Effective January 1, 1992, Canada was scheduled to assume 50% of the cost of the joint administration by Quebec of the GST and the QST in Quebec. This has now been delayed until July 1, 1992.	Canada bears all costs of administration, including forms, processing, audit, collection, and prosecutions. In exchange, Canada retains all monies from arrears interest on overdue taxes, fines, and penalties levied on both the federal and provincial amounts of income taxes involved. As a fee for processing claims filed by Ontario residents for Ontario Tax Credits, the federal government receives an amount equivalent to 1% of all credits processed. Presently, this amounts to about $4 million annually.
The salary requirements for the GST component will be determined by the Canadian ratio for the "number of registrants per person year" required by Canada to administer the GST, except in cases where either the federal or provincial government administers a consumption tax on behalf of the other.	No related provision.
The value of compensable salary for the province will be based on the number of Revenu Quebec employees engaged in the joint administration of GST and QST. This number may not exceed twice the number of person years required by Canada for an equivalent number of registrants.	No related provision
Canada's share of the start-up costs of joint administration will be paid in equal proportions in each of the first 36 months of the Agreement, for a total of $20 million.	No related provision.
All other joint administrative costs will be apportioned on a mutually-agreed basis.	No related provision.

GST Agreement	Tax Collection Agreement
Canada and Quebec strive to attain the common objective of reducing the total number of person-years in Revenu Quebec that are assigned to the joint administration by 500 person-years at the end of the third year of Quebec's administration of the GST.	No related provision.

Commentary

The costs of joint administration of GST and QST are divided equally. It remains to be seen whether the $20 million provided to Quebec by the federal government as its contribution to start-up costs will be adequate to meet actual costs incurred.

One aspect of the GST Agreement, that is absent in the TCA, however, is the establishment of formal consultation and dispute resolution bodies. Should Quebec provide evidence that the $20 million was less than required for the federal government's share of start-up costs, a formal review may be sought and the issue resolved.

Under the TCA, there is no formal consultation body, and disputes and differences are settled by court intervention.

At first glance, it would appear that, when comparing each party's costs of administration associated with the two Agreements, Ontario is a clear winner in its arrangements via the TCA. Ontario's only direct cost is related to the processing fee charged for the amount of Ontario Tax Credits (OTC) processed.

There are, however, very significant financial costs for Ontario resulting from the extended payment schedule for receipt of Ontario's personal income taxes collected by the federal government.

Analysis reveals that Ontario may, in effect, be paying for the full costs of administration of its provincial income tax, and subsidizing the federal government for costs of federal administration as well. For a review of this analysis, refer to the study paper entitled **The Federal-Provincial Tax Collection Agreement: How Ontario Receives Its Personal Income Tax**.

Management of Funds

GST Agreement	Tax Collection Agreement
GST monies collected by Quebec must be credited to Canada's account within 24 hours of receipt by Quebec.	Payments by Canada to Ontario consist of 48 payments, which are scheduled as follows: i) 3 payments in February of the taxation year; ii) 4 payments in each month from March to December of the taxation year; iii) 4 payments in January of the year following the taxation year; and iv) 1 payment in February of the year following the taxation year. Interim and final adjustments of Ontario PIT payable and OTC charges are made in January and March of the second year following the taxation year. In addition, 24 equal deductions are made for OTC charges from payments 8 to 31, inclusive.
Any GST monies received by Quebec which are not credited to Canada's account within 24 hours of receipt by Quebec are subject to "float charges". Similarly, overpayments of GST monies by Quebec to Canada are subject to "float charges" credited to Quebec.	There is no interest credited to Ontario on Ontario PIT collected but not transferred, either on increased amounts transferred during the 48 payment cycle or on monies transferred at the time of interim and final adjustment. Similarly, Ontario is not charged interest on overpayments of Ontario PIT.
Equal interest rates for "float charges" will apply to GST monies owing or overpaid by Quebec.	No related provision.
Float charges owing to or owed by Quebec will be accounted for monthly.	No related provision.
Canada will pay Quebec monthly for Canada's portion of all bank charges incurred for GST administration in Quebec.	No related provision.

GST Agreement	Tax Collection Agreement
Unspecified GST remittances to be apportioned daily between GST and QST, based on an agreed-upon formula.	Unapplied taxes collected are apportioned to Ontario based on percentage of national basic federal tax (BFT) from Ontario and Ontario's PIT rate.
Quebec identifies all GST bad debts in Quebec. For amounts not exceeding $2,000, Quebec has authority for write-off of bad debts. Amounts exceeding $2,000 must be submitted to Canada for review and approval. Canada absorbs all bad debts for GST in Quebec.	Canada assumes all bad debts for federal and provincial personal income tax assessed but not collected. Ontario receives all Ontario PIT assessed, whether collected or not.
Prior to paying a GST refund to a person, Quebec will apply that amount owing, or about to be owing, by that person to Canada. Subject to statutory authority to do so, thereafter Quebec will apply any balance owing, or about to be owing, by such person to Quebec in respect of the QST.	No related provision.
Prior to paying a QST refund to a person, Quebec will apply that amount owing, or about to be owing, by that person to Quebec. Subject to statutory authority to do so, thereafter Quebec will apply any balance owing, or about to be owing, by such person to Canada in respect of the GST.	No related provision.
A single refund issued by Quebec in respect of the GST and QST will be accompanied by a summary statement indicating separately for each tax all adjustments and allocations.	Refunds do not differentiate between federal and Ontario tax amounts. The statement accompanying the refund states the amount of OTC, where applicable.

Commentary

There are four major differences in the management of funds as outlined below.

Frequency of Payments

There are two distinct bases upon which funds transfers are carried out under the terms of the two Agreements. The GST Agreement requires GST funds to be transferred to Canada within 24 hours of receipt by Quebec. This "cash on hand" arrangement ensures that transfers to Canada are made daily, based on revenues received by Quebec. Ontario PIT revenue transfers, however, are not based on actual tax revenues collected by RCT within the timeframe between transfers. The federal government transfers Ontario's PIT monies 48 times in a twelve month period, commencing in the month after the beginning of the taxation year, and concluding with interim and final adjustments occurring 13 and 15 months after the end of the taxation year. The forecast of Ontario PIT revenues to be transferred, and the amount of each of the 48 instalment payments, are based on a formula which uses tax data which is two years prior to the taxation being forecast.

The GST arrangement leaves Canada with no "bridge-financing" costs between the time of GST collection by Quebec and receipt by Canada. On the other hand, due to the extended payment schedule of the TCA, Ontario experiences very significant "bridge-financing" costs between the time of Ontario PIT collection by the federal government and receipt by Ontario. For a review of this issue, refer to the essay entitled **The Federal-Provincial Tax Collection Agreement: How Ontario Receives Its Personal Income Tax.**

Interest Charges

The GST Agreement accords equal treatment of interest charges on funds owed to or owed by either party. As mentioned above, this provision is not part of the TCA. Since neither pays or receives interest charges, it may be said that each party is treated in the same way.

However, it would be inaccurate to contend that such treatment is equitable. Experience has shown that Ontario is greatly disadvantaged by the absence of such a provision in the TCA, since the amounts of monies transferred to Ontario as interim and final adjustments have grown tremendously in the recent past. For a review of this issue, refer to the study paper entitled The Federal-Provincial Tax Collection Agreement: How Ontario Receives Its Personal Income Tax.

Bad Debt Provisions

The GST Agreement requires that Canada assume all bad debts for GST in Quebec. There is, however, some opportunity for Canada to reduce its bad debts for GST in Quebec. The GST Agreement stipulates that any GST refund, or QST refund remaining after applying such QST refund to QST owing, will be applied to any GST owing before a refund is issued. A reciprocal provision exists for QST refunds. Only experience will show whether either party benefits from this arrangement in reducing its bad debts. The extent of benefit will also reflect the incidence and amounts of refunds applicable to the general administration of GST and QST.

Under the TCA, Canada assumes all bad debts for both federal and Ontario PIT. Ontario receives all Ontario PIT assessed, whether collected or not. This is a distinct benefit for Ontario. During the past few years, the amount of federal write-off of bad debts has increased significantly, which may, in some degree, be a reflection of deteriorating accounts receivable management by Revenue Canada, Taxation.

Refund Transparency

The GST Agreement requires delineation of GST and QST amounts when a single refund for both taxes is issued. The federal government refers to such delineation as "transparency". In this way, the taxpayer is informed of the specific amounts attributable to each tax.

The TCA has no such "transparency" provision. With exception of specific identification of the amount of OTC included in the refund, the income tax portion of the refund does not distinguish between federal and provincial income tax amounts. Consequently, since the refund cheque is issued on Government of Canada paper stock, the taxpayer could infer that the income tax portion of the refund is attributable to the federal government only.

Audit

GST Agreement	Tax Collection Agreement
Canada will, in close co-operation with Quebec, determine the nature and content of audit programs and other matters relating to the development of a national audit strategy.	Canada agrees to audit 2% of all OTC claims. There is no role for Ontario in the development of a PIT audit strategy, either for Ontario or as part of a national strategy.
Quebec will carry out all audit related to the national audit program, as well as any other audit procedure required by Canada from time to time.	Any audit strategy developed by Revenue Canada, Taxation is implemented for federal results as their primary intent. Any benefit for Ontario results from the lock-step relationship between federal PIT liability and Ontario PIT liability.
Quebec will add to the national repository any data or information obtained in the course of any GST audit.	No related provision.

Commentary

While Canada has the final decision in the setting of audit strategies under the GST Agreement, Quebec is given access to discussions of development. The setting of the audit strategy ensures that Canada is given protection over its tax base and the revenues derived therefrom. Quebec is also given access to the development of national standards and the setting of administrative policy, which it will administer. These provisions ensure that neither party can unilaterally reduce audit coverage, thus reducing the revenues of the other.

Under the TCA, Ontario, with the exception of OTC audits, has no input into the development of federal audit policies and actions. Specifically, Ontario has no input into the development of an audit strategy that would reflect its own priorities.

In addition, any reduction in federal audit coverage has a direct, negative effect on Ontario PIT revenues. In recent years, due to budget constraints, the level of federal audit coverage of individual tax returns has deteriorated significantly. This unilateral decision of the federal government has undoubtedly resulted in a reduction in Ontario PIT revenues of many millions of dollars. For an analysis of the potential PIT losses for Ontario, refer to the study paper entitled **The Federal-Provincial Tax Collection Agreement: How Ontario Receives Its Personal Income Tax.**

Enforcement and Investigations

GST Agreement	Tax Collection Agreement
Canada will, in close co-operation with Quebec, determine the nature and content of activities with respect to investigations and the collection of information, and other matters relating to the development of a national strategy.	Enforcement and investigation strategies are the sole responsibility of Canada on Ontario's behalf. There is no input sought from Ontario.
Quebec will carry out any investigation or any procedure of the national program, as well as any other procedure required by Canada from time to time.	All related activities are conducted solely by Canada, based on federal priorities. Any benefits accruing to Ontario are flow-throughs of of federal tax liabilities.
Canada and Quebec will co-operate closely in conducting investigations and collecting information, and will co-ordinate all related procedures in accordance with Canada's and Quebec's practices.	No related provision.
Quebec will add any data or information obtained to the national repository.	No related provision.

Commentary

Similar to audit provisions, Ontario has no role in developing enforcement and investigations strategies, either to address Ontario priorities, or as part of national strategies.

Canada has complete domain over this area. Federal priorities are the principal determinants in developing strategies. The lock-step relationship between federal PIT liability and Ontario PIT liability provides a "ripple-effect" benefit for Ontario emanating from federal strategies which result in increased federal PIT revenues.

Quebec, on the other hand, again has direct input into the development of investigation and information-collection activities and the setting of a national strategy.

Objections and Appeals

GST Agreement	Tax Collection Agreement
Quebec receives all notices of objection, and will immediately upon receipt, forward to Canada a copy of the notice and any documentation filed with it.	All objections and appeals are the exclusive responsibility of the federal government. Ontario will provide such information and assistance as may be requested by Canada.
Quebec will register and process all notices of objection, in accordance with procedures in effect in the Ministere du Revenue du Quebec, and add all related data and information to the national repository.	No related provision.
Where Canada requires specific directives to be followed in order to ensure a nationally consistent and uniform appliction and interpretation of the GST, Quebec will apply such directives.	No related provision.
Canada reserves the right, within a specified time period, to issue a decision which is contrary to the one recommended by Quebec.	No related provision.
Differences between Canada and Quebec in interpretation or application of GST and QST will be discussed jointly. When the differences persist, Canada will determine the GST position and Quebec will issue a decision in accordance with that position.	No related provision.
The Deputy Minister of National Revenue, Customs and Excise will receive from the Tax Court of Canada notices of appeal.	No related provision.
Upon receipt, a copy of the appeal and any attached documentation will be forwarded to Quebec, for action by Quebec.	No related provision.
Where Canada requires that specific directives be followed for the purpose of ensuring a nationally consistent and uniform application of the GST, Quebec will apply the directives.	No related provision.

GST Agreement	Tax Collection Agreement
Quebec will forward to Canada any recommendation for out-of-court settlement.	No related provision.
Upon receipt of a court decision Quebec will forward to Canada a copy of the decision and reasons for the decision. Quebec will also advise Canada of its recommendation to appeal or not to appeal in the case of an adverse decision.	No related provision.
Canada reserves the right to intervene or replace Quebec when an appeal or other legal action is filed with the Federal Court of Appeal or the Supreme Court of Canada.	No related provision.

Commentary

Under the GST Agreement, within which Canada reserves the right to conduct any specific appeal, Quebec processes and conducts appeals in accordance with the applicable appeal procedures of the Ministere du Revenu du Quebec, and any applicable GST directives by Canada.

Under the TCA, Canada has complete control and responsibility for the appeal function. Ontario's role is limited to the provision of any information relating to the matter, if requested by Canada.

Prosecutions

GST Agreement	Tax Collection Agreement
Quebec will assume the conduct of litigation and the provision of legal advice arising from the administration of the GST in Quebec.	Any necessary actions, suits or prosecutions or other legal proceedings under the provincial act shall be conducted by Canada on behalf of Ontario. Ontario will assist Canada in the conduct of any matter related to the action, and forward any related documents to Canada.
Lawyers employed by the Government of Quebec will be empowered by the Attorney-General of Canada to conduct litigation of GST in Quebec.	No related provision.
The Attorney-General of Canada reserves the right to revoke unilaterally the rights accorded to lawyers employed by the Government of Quebec for the administration of the GST in Quebec.	No related provision.
Quebec reserves the right to terminate unilaterally the rights accorded to it for the litigation of GST in Quebec.	No related provision.

Commentary

Again, under the GST Agreement, Quebec assumes responsibility, except where Canada reserves the right unto itself, for all administration of litigation matters.

For Ontario under the TCA, the province furnishes information to federal officials, who then conduct the litigation. Ontario is allowed to participate directly in prosecutions for matters relating to the provincial Income Tax Act, but the practice in recent years has been not to do so.

As a result, federally-conducted litigation has involved only matters relating to the Federal Income Tax Act. Since Ontario receives its assessed personal income tax, whether collected or not, it is not necessary to pursue court action to acquire the monies.

Dispute Resolution

GST Agreement

When Canada and Quebec cannot agree on the interpretation or application of a provision of the Agreement, the matter may be referred to a Disputes Committee (the Committee).

The Committee will consist of three members, with one of the members to be selected by Canada, one by Quebec, and the third by the two selected members.

If the two selected members cannot agree on the third member within 15 days, their appointments are nullified. Canada and Quebec will then appoint a new member each, who will then appoint a third member.

This procedure will be repeated until a Committee consisting of three members has been formed.

The Committee will examine all issues in dispute and will, at the earliest possible time, submit its report and the findings of the majority, including any conclusions and recommendations.

On submission of the report, the Committee will be dissolved.

Expenses incurred by the Committee will be borne equally by Canada and Quebec.

Tax Collection Agreement

Both parties have right of access to the courts if either party feels that the other has failed to observe a provision or if there is a disagreement as to the interpretation of any provision of the Agreement.

The stipulated process is as follows:

- within 60 days written notice of the dispute, Ontario will refer the matter, via the Lieutenant Governor, to the Court of Appeals of Ontario;
- the Court rules on the matter and outlines steps for the parties to restore mutual compliance;
- the steps determined by the Court of Appeal of Ontario, or the Supreme Court of Canada if the action outlined by the provincial court is appealed, are binding on both parties.

Failure to comply with actions prescribed by the court(s) will be considered cause for the other part to terminate the Agreement.

Each party agrees to accept and bear its own costs of the action.

Commentary

There is a very distinct difference in the dispute resolution process. The GST Agreement involves a far more conciliatory route than provided for under the TCA, which is based upon an adversarial approach.

Under the GST Agreement, Quebec and Canada have an equal opportunity to forge an administrative resolution. The TCA process resorts to court action as its resolution approach, which removes the bureaucracy from the process. Such an approach is more combative and impairs the development and maintenance of an administrative relationship based on mutual co-operation and negotiation.

Co-ordination and Liaison

GST Agreement

The Department of National Revenue, Customs and Excise, will establish a Co-ordination and Liaison Office, which will be responsible for;

- providing a point of liaison for the analysis of notices of objection received by Quebec;
- providing a point of liaison for approval of precedent-setting rulings before they are issued by Quebec;
- providing communications and liaison between Quebec and Revenue Canada, Customs and Excise headquarters with regard to national audit strategies, administrative policy and the formulation of national standards;
- facilitating the resolution of problems relating to the integration of federal and provincial operations;
- assuming responsibility for Quebec corporations that elect to have their affairs conducted in English; and
- providing administrative support to the Joint Committee.

The senior officer of the Office of Co-ordination and Liaison and the senior officer of the Ministere du Revenu du Quebec responsible for the GST will act as co-chairmen of the Joint Committee.

Tax Collection Agreement

There are two committees of officials of Revenue Canada, Taxation and the Ontario Ministry of Treasury and Economics which discuss matters of mutual interest. One committee, which meets twice annually, discusses matters relating to the specific details of the TCA, including economic conditions, which bear on federal estimates of provincial income tax revenues. The committee is an information forum - it has no decision-making power.

The second committee, the Federal-Provincial Committee on Taxation, meets on an ad hoc basis to discuss issues relating to matters of federal-provincial taxation. The Committee's membership includes representatives from all provinces and territories. During the lead-up to federal tax reform in 1987-88, the Committee met on a frequent basis. Thereafter, it did not meet for approximately two years. Recently, the Committee has met on several occasions to discuss potential changes to the TCA prior to, and following, release of the federal discussion paper on this topic. Once again, this Committee is an information and discussion forum - it has no decision-making power.

GST Agreement

Canada and Quebec will establish a Joint Committee and each will appoint an equal number of members to it from among their respective officers.

The Joint Committee may appoint ad hoc members to deal with problems raised in specialized areas.

The Joint Committee may take any action conducive to the performance of its duties, such as:

- supervising and ensuring compliance with the Agreement;

- considering any problems submitted to it and resolving them or making appropriate recommendations;

- conducting management reviews, audits of internal operations, and program evaluation;

- co-ordinating initiatives and activities with respect to public relations, where such initiatives and activities relate to both GST and QST; and

- ensuring the implementation of rationalization measures designed to attain the reduction of the total number of person-years required for the joint administration of GST and QST.

The Joint Committee will submit a management report at the end of each fiscal year.

Commentary

Arrangements under the GST Agreement afford Quebec direct involvement in decision-making and recommending responsibilities. In addition, the management review function provides Quebec with an equal role in evaluating the performance of GST administration in Quebec.

By contrast, Ontario's role under the TCA is by way of information and discussion only. Both the TCA committees are controlled by federal officials, who provide an opportunity for the provinces to voice their views. Federal officials are under no obligation to accommodate provincial requests or positions, since neither body is constituted as a recommending or decision-making forum.

Ontario is provided no right of participation in an evaluation of federal administration of Ontario PIT. In fact, access to tax data and federal methods of calculating Ontario PIT amounts are resisted by the federal government. Attempts to acquire information held, but not otherwise published by the federal government, in the past have met with little or no success.

Termination

GST Agreement	Tax Collection Agreement
Canada and Quebec may terminate the Agreement unilaterally by written notice to the other. The Agreement will cease to be in force at the end of the 18 months that follow the last day of the calendar quarter in which the notice of termination was received.	Canada, by written notice, may terminate the Agreement **at any time during the year**, effective January 1st of the following year. Ontario, by written notice, may terminate the Agreement **by October 1st of the year**, effective January 1st of the following year.
Notwithstanding this provision, Canada and Quebec may agree on a date of termination of the Agreement.	No related provision.
Upon termination, all rights and obligations of Canada and Quebec cease except for the obligation of Quebec to remit to Canada any amounts collected or to be collected in the course of administering the GST.	Upon termination, the terms of the Agreement continue to apply to the taxation years during which the Agreement was operative.
Quebec will be accountable to Canada until all obligations or all conditions agreed to with Canada are fulfilled.	Canada is accountable to Ontario until all obligations or all conditions agreed to with Ontario are fulfilled.

Commentary

Under the GST Agreement, prior notice required by either party for termination is the same for both Canada and Quebec. As such, each party is afforded equal treatment. However, under the TCA, Canada may terminate the Agreement at any time during the year, to be effective January 1st of the following year, while Ontario must notify Canada by October 1st, for termination to be effective January 1st of the following year.

Both Agreements provide for terms and provisions to continue beyond the date of termination, until all obligations and conditions are fulfilled by the party collecting the tax on behalf of the other for the periods covered before the date of termination.

PART III

ANALYSIS AND CONCLUSIONS

Introduction

While a comparison of the two Agreements reveals a number of common elements, there are two areas which show a marked departure in the relationship of the parties. Specifically, the provincial role in tax policy development and cost sharing are distinctly different.

Below are selected provisions of the two Agreements which are relevant to the analysis of the differences.

Tax Policy Development

GST Agreement	Tax Collection Agreement
Legislation and Administration	
Quebec will administer GST in Quebec in accordance with interpretations made by Canada and in accordance with Canada's tax policy.	Canada administers the Income Tax Act (Ontario) as a replica of the Income Tax Act (Canada).
Where differences in interpretation exist between Canada and Quebec, Canada will make the definitive decision and Quebec will apply it.	Ontario accepts as final all decisions of the Minister of National Revenue, without the benefit of consultation or discussion.
Any precedent-setting interpretation or advance ruling must be submitted to Canada for review and approval before communication to any party.	Canada has complete dominion over interpretations and advance rulings. Ontario has no input, merely complying with federal decisions.
Audit	
Canada will, in close co-operation with Quebec, determine the nature and content of audit programs and other matters relating to the development of a national audit strategy.	Canada agrees to audit 2% of all OTC claims. There is no role for Ontario in the development of a PIT audit strategy, either for Ontario or as part of a national strategy.

GST Agreement	Tax Collection Agreement
Enforcement and Investigations	
Canada will, in close co-operation with Quebec, determine the nature and content of activities with respect to investigations and the collection of information, and other matters relating to the development of a national strategy.	Enforcement and investigation strategies are the sole responsibility of Canada on Ontario's behalf. There is no input sought from Ontario.
Objections and Appeals	
Differences between Canada and Quebec in interpretation or application of GST and QST will be discussed jointly. When the differences persist, Canada will determine the GST position and Quebec will issue a decision in accordance with that position.	No related provision.
Dispute Resolution	
When Canada and Quebec cannot agree on the interpretation or application of a provision of the Agreement, the matter may be referred to a Disputes Committee (the Committee).	Both parties have right of access to the courts if either party feels that the other has failed to observe a provision or if there is a disagreement as to the interpretation of any provision of the Agreement.
Co-ordination and Liaison	
The Department of National Revenue, Customs and Excise, will establish a Co-ordination and Liaison Office, which will be responsible for assisting with the resolution of problems and providing administrative support to the Joint Committee.	There is a committee of officials of Revenue Canada, Taxation and the Ontario Ministry of Treasury and Economics which discusses matters of mutual interest. These matters relate to the specific details of the TCA, including economic conditions, which bear on federal estimates of provincial income tax revenues. The committee is an information forum - it has no decision-making power.

GST Agreement

Canada and Quebec will establish a Joint Committee and each will appoint an equal number of members to it from among their respective officers.

The Joint Committee supervises compliance with the Agreement, resolves problems submitted to it, or makes appropriate recommendations for resolution, and submits an annual management report on the performance of GST administration in Quebec.

Tax Collection Agreement

A Federal-Provincial Committee on Taxation is constituted as a forum for discussion of all matters relating to the provisions of the TCA. The Committee has met very infrequently in recent years. Meetings provide for exchanges of views on how the TCA is working, for suggestions of change and for consideration of new matters. Once again, the Committee has a discussion role without authority for decision.

Analysis - Tax Policy Development

There is a distinct difference in both tone and substance between the two agreements. While both empower the federal government with decision-making powers, the GST Agreement formally legitimizes the involvement of Quebec in policy and strategy-setting development.

This is particularly noteworthy, since the GST Agreement involves the administration of a federal statute by a province. It is to be expected that the level of government to which the statute relates would seek to retain final authority. In the case of the TCA, **the Ontario government has no policy and strategy-setting role in the administration of its own statute - the Income Tax Act (Ontario)**. Such a role has been relinquished as a condition of the TCA.

In addition, as mentioned earlier, unilateral decisions by Canada regarding audit coverage, have a direct effect on Ontario PIT revenues. Since it is not part of the TCA, Canada is free to decide upon audit strategies and coverage which may be contrary to Ontario's interests. The only exception to this unfettered authority is the requirement for a minimum audit coverage of 2% of all OTC claims.

While it is not yet known whether the GST national audit strategy will include minimum coverage provisions, to protect its revenues, it is anticipated that Canada would seek to include some minimum national standards for provincial administration of the GST. Certainly Canada would not wish to be as vulnerable under the GST Agreement as Ontario is under the TCA.

Cost Sharing

GST Agreement	Tax Collection Agreement
Effective January 1, 1992, Canada was scheduled to assume 50% of the cost of the joint administration by Quebec of the GST and the QST in Quebec. This has now been delayed until July 1, 1992.	Canada bears all costs of administration, including forms, processing, audit, collection, and prosecutions. In exchange, Canada retains all monies from arrears interest on overdue taxes, fines, and penalties levied on both the federal and provincial amounts of income taxes involved. As a fee for processing claims filed by Ontario residents for Ontario Tax Credits, the federal government receives an amount equivalent to 1% of all credits processed.
Canada's share of the start-up costs of joint administration will be paid in equal proportions in each of the first 36 months of the Agreement, for a total of $20 million.	No related provision.
All other joint administrative costs will be apportioned on a mutually-agreed basis.	No related provision.
GST monies collected by Quebec must be credited to Canada's account within 24 hours of receipt by Quebec.	Payments by Canada to Ontario consist of 48 payments, which are scheduled as follows: i) 3 payments in February of the taxation year; ii) 4 payments in each month from March to December of the taxation year; iii) 4 payments in January of the year following the taxation year; and iv) 1 payment in February of the year following the taxation year. In addition, 24 equal deductions are made for OTC charges from payments 8 to 31, inclusive.

GST Agreement	Tax Collection Agreement
	Interim and final adjustments of Ontario PIT payable and OTC charges are made in January and March of the second year following the taxation year.
Any GST monies received by Quebec which are not credited o Canada's account within 24 hours of receipt by Quebec are subject to "float charges".	There is no interest credited to Ontario on Ontario PIT collected but not transferred, either on increased amounts transferred during the 48 payment cycle or on monies transferred at the time of interim and final adjustment. Similarly, Ontario is not charged interest on overpayments of Ontario PIT.
Similarly, overpayments of GST monies by Quebec to Canada are subject to "float charges" credited to Quebec.	
Equal interest rates for "float charges" will apply to GST monies owing or overpaid by Quebec.	No related provision.
Float charges owing to or owed by Quebec will be accounted for monthly.	No related provision.
Canada will pay Quebec monthly for Canada's portion of all bank charges incurred for GST administration in Quebec.	No related provision.
Quebec identifies all GST bad debts in Quebec. For amounts not exceeding $2,000, Quebec has authority for write-off of bad debts. Amounts exceeding $2,000 must be submitted to Canada for review and approval. Canada absorbs all bad debts for GST in Quebec.	Canada assumes all bad debts for federal and provincial personal income tax assessed but not collected. Ontario receives all Ontario PIT assessed, whether collected or not.

Analysis - Cost Sharing

The GST Agreement provides equal treatment of each party with regard to management of funds and associated costs. Canada assumes all bad debts for GST in Quebec.

On the surface, by comparison, Ontario would appear to have an extremely advantageous arrangement with Canada under the TCA. Since Canada bears all costs of administration and absorbs both federal and provincial bad debts for personal income taxes, Ontario seems to be the recipient of a "sweetheart deal".

Closer analysis reveals that, while Ontario may receive a "charge-free" service, federal administration of Ontario's personal income taxes is far from "cost-free". The extended payment schedule for receipt of Ontario PIT for a given taxation year results in substantial "bridge-financing" costs between the time of collection by Canada and receipt by Ontario. The trend in recent years shows that these carrying costs are escalating rapidly.

The analysis referenced in the study paper The Federal-Provincial Tax Collection Agreement: How Ontario Receives Its Personal Income Tax indicates the true cost to Ontario of the charge-free administration of its personal income tax by Canada. Given this position, Ontario may wish to consider the GST Agreement approach, whereby all joint costs of administration are identified and allocated accordingly to each party. Perhaps, as in the GST Agreement, Ontario and Canada could conduct an annual joint evaluation of the administration of its personal income tax by Canada.

Conclusions

Analysis indicates that, while there are common elements in the two Agreements, there are also sharp differences between them as well. For Ontario, these differences would appear to be contrary to the interests of the province, particularly as they relate to areas of exclusive federal domain over tax policy development.

While the terms and conditions of the Canada-Quebec GST Agreement provide the federal government with final decision-making control in the areas of tax policy, legislation and interpretation, it cannot be said that Canada exercises complete exclusivity over tax policy.

Quebec has considerable input to the development of audit, investigation and other policies and strategies. The established fora for such input provide an official role for Quebec. In the area of costs, joint administration is shared on a 50/50 basis. This seems eminently fair for both parties.

With regard to the TCA, the nature of the relationship is far different. Ontario is a silent partner, without any "voting" rights in the development of tax policies or strategies which have a direct bearing on Ontario personal income tax. The fora established for discussion of issues are non-decision making bodies. The incidence of meeting frequency also suggests a low utility value.

If the terms and conditions of the GST Agreement are representative of the federal-provincial relationship of the 1990's, then it can be said that the TCA is due for a major overhaul. Using the GST Agreement as a guide may be a valuable tool for Ontario in its negotiations for a better arrangement.

BIBLIOGRAPHY

Tax Collection Agreement between the Government of Canada and the Government of Ontario: Unofficial Consolidation and Summary, Ministry of Revenue, August 1990.

Agreement with Respect to the Administration by Quebec of Part IX of the Excise Tax Act (R.S.C., 1985, c. E-15) Relating to the Goods and Services Tax Between the Government of Canada, Represented by the Minister of National Revenue, and the Government of Quebec, Represented by the Minister of Revenue and the Minister Responsible for Canadian Intergovernmental Affairs, April 1991.

The Federal-Provincial Tax Collection Agreement: How Ontario Receives Its Personal Income Tax, Ontario Ministry of Revenue, 1991.

DATE DUE
AUG 14 1995

REP/O/REV/1991-014
Ontario. Ministry of Reve
Changing
federal-provincial partner
c.1 lib allb

HJ/4663/.057/.A86/n.4
Ontario. Ministry of Reven
Changing
federal-provincial fniu
c.1 tor mai